

§ 105-130.4. (Effective for taxable years beginning before January 1, 2017) Allocation and apportionment of income for corporations.

(a) As used in this section, unless the context otherwise requires:

- (1) "Apportionable income" means all income that is apportionable under the United States Constitution.
- (2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
- (3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
- (4) **(Repealed effective for taxable years beginning on or after January 1, 2018)** "Excluded corporation" means any corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.
- (5) "Nonapportionable income" means all income other than apportionable income.
- (6) **(Repealed effective for taxable years beginning on or after January 1, 2018)** "Public utility" means any corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.
- (7) "Sales" means all gross receipts of the corporation except for the following receipts:
 - a. Receipts from a casual sale of property.
 - b. Receipts allocated under subsections (c) through (h) of this section.
 - c. Receipts exempt from taxation.
 - d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.
 - e. **(Effective for taxable years beginning on or after January 1, 2016)** The portion of receipts from financial swaps and other similar financial derivatives that represents the notional principal amount that generates the cash flow traded in the swap agreement.
 - f. **(Effective for taxable years beginning on or after January 1, 2016)** Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a), (3b), and dividends excluded for federal tax purposes.
- (8) "Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.
- (9) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section.

For purposes of allocation and apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.

(c) Rents and royalties from real or tangible personal property, gains and losses, interest, dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonapportionable income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d) (1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

a. If and to the extent that the property is utilized in this State, or

b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e) (1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if

a. The property had a situs in this State at the time of the sale, or

b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.

(3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.

(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses.

(g) (1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:

a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or

b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

- (2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.
- (3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) The income less related expenses from any other activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments is located in this State.

(i) **(Effective for taxable years beginning before January 1, 2016)** All apportionable income of corporations other than public utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus one.

(i) **(Effective for taxable years beginning on or after January 1, 2016 and before January 1, 2017)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus two.

(i) **(Effective for taxable years beginning on or after January 1, 2017 and before January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus four times the sales factor, and the denominator of which is six. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus three.

(i) **(Effective for taxable years beginning on or after January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by the sales factor as determined under subsection (l) of this section.

- (j) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

- (2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute apportionable income. Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded in the computation of the property factor.
 - (3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.
- (k) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during the income year. All compensation paid to general executive officers and all compensation paid in connection with nonapportionable income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.
- (2) Compensation is paid in this State if:
 - a. The individual's service is performed entirely within the State; or
 - b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or
 - c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.
- (l) (1) **(See editor's note)** The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another

state only because of nonapportionable income, all sales shall be treated as having been made in this State.

- (2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.
- (3) Other sales are in this State if:
 - a. The receipts are from real or tangible personal property located in this State; or
 - b. The receipts are from intangible property and are received from sources within this State; or
 - c. The receipts are from services and the income-producing activities are in this State.

(m) All apportionable income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

"Railway operating revenue" from business done within this State shall mean "railway operating revenue" from business wholly within this State, plus the equal mileage proportion within this State of each item of "railway operating revenue" received from the interstate business of the company. "Equal mileage proportion" shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. "Interstate business" shall mean "railway operating revenue" from the interstate transportation of persons or property into, out of, or through this State. If the Secretary of Revenue finds, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

(n) All apportionable income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal

Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) All apportionable income of a motor carrier of property shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company hauling property for a charge or traveling on a scheduled route.

(p) All apportionable income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) All apportionable income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (l) of this section.

(r) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of an excluded corporation and of all other public utilities shall be apportioned by multiplying the income by the sales factor as determined under subsection (l) of this section.

(s) **(Effective for taxable years beginning before January 1, 2016)** All apportionable income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(s) **(Effective for taxable years beginning on or after January 1, 2016)** All apportionable income of an air transportation corporation or a water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. A qualified air freight forwarder shall use the revenue ton mile fraction of its affiliated air carrier. The following definitions apply in this subsection:

- (1) Air carrier. – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.
- (2) Air transportation corporation. – One or more of the following:
 - a. An air carrier that carries any combination of passengers or property of any kind.
 - b. A qualified air freight forwarder.
- (3) Qualified air freight forwarder. – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.
- (4) Revenue ton mile. – One ton of passengers, freight, mail, or other cargo carried one mile by the air transportation corporation or water transportation corporation by aircraft, motor vehicle, or vessel. In making this computation, a passenger is considered to weigh two hundred pounds.

(s1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of a qualified capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (l) of this section. A "qualified capital intensive corporation" is a corporation that satisfies all of the conditions of this subsection. A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a qualified capital intensive corporation. If the corporation fails to invest one billion dollars (\$1,000,000,000) in private funds within nine years as required by subdivision (2) of this subsection, the benefit of this subsection expires and the corporation must apportion income as it would otherwise be required to do under this section absent this subsection. The conditions are:

- (1) The corporation's property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%) or the corporation's average property factor for the preceding three years as a percentage of the average sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factors, for the preceding three years exceeds seventy-five percent (75%).
- (2) The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least one billion dollars (\$1,000,000,000) in private funds to construct a facility in this State within nine years after the time that construction begins. For the purposes of this subsection, costs of construction include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.
- (3) The corporation maintains the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the investment required under subdivision (2) of this subsection.
- (4) The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.
- (5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, the wage standard that must be satisfied is the one established under G.S. 105-164.3(33c)a.
- (6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if it satisfies the provisions of G.S. 105-164.3(33c)c.

(t) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. For applicability, see Editor's note.

(t1) **Alternative Apportionment Method.** – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of

determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return.

(t2) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5; 2001-327, s. 1(c); 2002-126, s. 30G.1(a); 2003-349, ss. 1.2, 1.3; 2003-416, ss. 5(a)-5(h); 2004-170, s. 15; 2005-435, s. 53; 2007-491, ss. 2, 12; 2009-54, ss. 1, 2, 6; 2009-445, ss. 4, 5; 2010-89, s. 2(a), (b); 2011-330, s. 5; 2013-414, s. 2(b); 2015-241, s. 32.14(a)-(d); 2015-268, s. 10.1(c); 2016-5, ss. 1.3(a), 1.6(a), 5.5(b); 2016-92, s. 1.1.)

§ 105-130.4. (Effective for taxable years beginning on or after January 1, 2017) Allocation and apportionment of income for corporations.

(a) Definitions. – The following definitions apply in this section:

- (1) Apportionable income. – All income that is apportionable under the United States Constitution, including income that arises from either of the following:
 - a. Transactions and activities in the regular course of the taxpayer's trade or business.
 - b. Tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.
- (2) Business activity. – Any activity by a corporation that would establish nexus, except as limited by 15 U.S.C. § 381.
- (3) Casual sale of property. – The sale of any property that was not purchased, produced, or acquired primarily for sale in the corporation's regular trade or business.
- (4) Commercial domicile. – The principal place from which the trade or business of the taxpayer is directed or managed.
- (5) Compensation. – Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
- (6) Nonapportionable income. – All income other than apportionable income.
- (7) Sales. – All gross receipts of the corporation except for the following receipts:
 - a. Receipts from a casual sale of property.
 - b. Receipts allocated under subsections (c) through (h) of this section.
 - c. Receipts exempt from taxation.
 - d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

- e. **(Effective for taxable years beginning on or after January 1, 2016)**
The portion of receipts from financial swaps and other similar financial derivatives that represents the notional principal amount that generates the cash flow traded in the swap agreement.
 - f. **(Effective for taxable years beginning on or after January 1, 2016)**
Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a), (3b), and dividends excluded for federal tax purposes.
- (8) State. – A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
- (b) Multistate Corporations. – A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if either of the following applies:
- (1) The corporation's business activity in that state subjects it to a net income tax or a tax measured by net income.
 - (2) That state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction.
- (c) Nonapportionable Income. – Rents and royalties from real or tangible personal property, gains and losses, interest, dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonapportionable income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.
- (d) Rents and Royalties. – Net rents and royalties are allocable to this State as follows:
- (1) Net rents and royalties from real property located in this State are allocable to this State.
 - (2) Net rents and royalties from tangible personal property are allocable to this State:
 - a. If and to the extent that the property is utilized in this State, or
 - b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.
 - (3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.
- (e) Gains and Losses. – Gains and losses are allocable to this State as follows:
- (1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.
 - (2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if
 - a. The property had a situs in this State at the time of the sale, or

- b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.
 - (3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.
- (f) Interest and Net Dividends. – Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses.
- (g) Intangible Property. – Intangible property is allocable to this State as follows:
 - (1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:
 - a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or
 - b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.
 - (2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.
 - (3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.
- (h) Other Income. – The income less related expenses from any other activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments is located in this State.
- (i) **(Effective for taxable years beginning before January 1, 2016)** Apportionable Income. – All apportionable income of corporations other than public utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus one.
- (i) **(Effective for taxable years beginning on or after January 1, 2016, and before January 1, 2017)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus two.
- (i) **(Effective for taxable years beginning on or after January 1, 2017, and before January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all

apportionable income of corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus four times the sales factor, and the denominator of which is six. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus three.

(i) **(Effective for taxable years beginning on or after January 1, 2018)** Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by the sales factor as determined under subsection (l) of this section.

(j) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute apportionable income. Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(k) (1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during the income year. All compensation paid to general executive officers and all compensation paid in connection with nonapportionable income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.

(2) Compensation is paid in this State if:

a. The individual's service is performed entirely within the State; or

- b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or
 - c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.
- (l) (1) **(See editor's note)** The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.
- (2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.
- (3) Other sales are in this State if any of the following occur:
- a. The receipts are from real or tangible personal property located in this State, and includes receipts from incidental services sold as part of, or in connection with, the sale of tangible personal property in this State.
 - b. The receipts are from intangible property and are received from sources within this State.
 - c. The receipts are from services and the income-producing activities are in this State. For the purposes of this subdivision, an "income-producing activity" means an activity directly performed by the taxpayer or its agents for the ultimate purpose of generating the sale of the service. Receipts from income-producing activities performed within and without this State are attributed to this State in proportion to the income-producing activities performed in this State to total income-producing activities performed everywhere that generate the sale of service.
- (m) **Railroad Company.** – All apportionable income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with generally accepted accounting principles.

If the Secretary of Revenue finds, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion

of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

The following definitions apply in this subsection:

- (1) Equal mileage proportion. – The proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue.
- (2) Interstate business. – Railroad operating revenue from the interstate transportation of persons or property into, out of, or through this State.
- (3) Railway operating revenue from business done within this State. – Railroad operating revenue from business wholly within this State, plus the equal mileage proportion within this State of each item of railway operating revenue received from the interstate business of the company.

(n) **(Repealed effective for taxable years beginning on or after January 1, 2017)** All apportionable income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) Motor Carrier. – All apportionable income of a motor carrier of property or a motor carrier of people shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company based upon one of the following:

- (1) Miles on a scheduled route.
- (2) Miles hauling property for a charge.
- (3) Miles carrying passengers for a fare.

(p) **(Repealed effective for taxable years beginning on or after January 1, 2017)** All apportionable income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) **(Repealed effective for taxable years beginning on or after January 1, 2017)** All apportionable income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (l) of this section.

(r) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of an excluded corporation and of all other public utilities shall be apportioned by multiplying the income by the sales factor as determined under subsection (l) of this section.

The following definitions apply in this subsection:

- (1) Excluded corporation. – Any corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property.
- (2) Public utility. – Any corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.

(s) **(Effective for taxable years beginning before January 1, 2016)** All apportionable income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(s) **(Effective for taxable years beginning on or after January 1, 2016)** Transportation Corporation. – All apportionable income of an air transportation corporation or a water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. A qualified air freight forwarder shall use the revenue ton mile fraction of its affiliated air carrier. The following definitions apply in this subsection:

- (1) Air carrier. – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.
- (2) Air transportation corporation. – One or more of the following:
 - a. An air carrier that carries any combination of passengers or property of any kind.
 - b. A qualified air freight forwarder.
- (3) Qualified air freight forwarder. – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.
- (4) Revenue ton mile. – One ton of passengers, freight, mail, or other cargo carried one mile by the air transportation corporation or water transportation corporation by aircraft, motor vehicle, or vessel. In making this computation, a passenger is considered to weigh two hundred pounds.

(s1) **(Repealed effective for taxable years beginning on or after January 1, 2018)** All apportionable income of a qualified capital intensive corporation shall be apportioned by multiplying the income by the sales factor as determined under subsection (l) of this section. A "qualified capital intensive corporation" is a corporation that satisfies all of the conditions of this

subsection. A corporation that is subject to this subsection must list on its return the property, payroll, and sales factors it used in determining whether it is a qualified capital intensive corporation. If the corporation fails to invest one billion dollars (\$1,000,000,000) in private funds within nine years as required by subdivision (2) of this subsection, the benefit of this subsection expires and the corporation must apportion income as it would otherwise be required to do under this section absent this subsection. The conditions are:

- (1) The corporation's property factor as a percentage of the sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factor, exceeds seventy-five percent (75%) or the corporation's average property factor for the preceding three years as a percentage of the average sum of the factors in the formula set out in subsection (i) of this section, including the doubling of the sales factors, for the preceding three years exceeds seventy-five percent (75%).
- (2) The Secretary of Commerce makes a written determination that the corporation has invested or is expected to invest at least one billion dollars (\$1,000,000,000) in private funds to construct a facility in this State within nine years after the time that construction begins. For the purposes of this subsection, costs of construction include costs of acquiring and improving land for the facility, costs for renovations or repairs to existing buildings, and costs of equipping or reequipping the facility.
- (3) The corporation maintains the average number of employees it has at the facility during the first two years after the facility is placed in service for the remainder of time in which the corporation must complete the investment required under subdivision (2) of this subsection.
- (4) The facility that satisfies the condition of subdivision (2) of this subsection is located in a county that was designated as a development tier one or two area at the time construction of the facility began.
- (5) The corporation satisfies a wage standard at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, the wage standard that must be satisfied is the one established under G.S. 105-164.3(33c)a.
- (6) The corporation provides health insurance for all of its full-time employees at the facility that satisfies the condition of subdivision (2) of this subsection. For the purposes of this subdivision, a company provides health insurance if it satisfies the provisions of G.S. 105-164.3(33c)c.

(s2) Pipeline Company. – Receipts from transportation of a petroleum-based liquids pipeline company shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of barrel miles in this State during the tax year and the denominator of which is the total number of barrel miles everywhere during the tax year. For purposes of this section, the term "barrel mile" means one barrel of liquid property transported one mile.

(t) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. For applicability, see Editor's note.

(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear,

cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return.

(t2) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5; 2001-327, s. 1(c); 2002-126, s. 30G.1(a); 2003-349, ss. 1.2, 1.3; 2003-416, ss. 5(a)-5(h); 2004-170, s. 15; 2005-435, s. 53; 2007-491, ss. 2, 12; 2009-54, ss. 1, 2, 6; 2009-445, ss. 4, 5; 2010-89, s. 2(a), (b); 2011-330, s. 5; 2013-414, s. 2(b); 2015-241, ss. 32.14(a)-(d); 2015-268, s. 10.1(c); 2016-5, ss. 1.3(a), 1.6(a), 5.5(b); 2016-92, s. 1.1; 2017-204, s. 1.5(a); 2018-5, s. 38.2(c); 2018-97, s. 11.2(a).)